

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SPB 7006

INTRODUCER: For consideration by the Health Policy Committee

SUBJECT: Prescription Drug Monitoring Program

DATE: January 19, 2017

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----------|----------------|-----------|--------------------|
| 1. Lloyd | Stovall | | Pre-meeting |

I. Summary:

SPB 7006 removes a repeal date of October 1, 2017, pertaining to the automatic repeal of provisions authorizing the Department of Health (department) to establish and contract with a direct-support organization for fundraising and support of the prescription drug monitoring program.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Citizen Support Organization (CSOs) and Direct Support Organizations (DSOs)

Citizen support organizations (CSOs) and direct support organizations (DSOs) are private entities created to assist or support governmental entities in carrying out their duties. Prior to 2014, CSOs and DSOs had frequently been created with similar organizational and reporting requirements, but no single standard or operational requirement had been established, except that such organizations were often Florida not-for-profit corporations that required approval by the Department of State.¹

In 2014, the Legislature conducted a review of the existing relationship between CSOs and DSOs and their governmental partners. One of the results of that review was legislation which established operational requirements and standards for CSOs and DSOs and an automatic review and repeal date for each organization.² Effective in August 2014, a CSO or DSO created or authorized pursuant to law or executive order and created, approved, or administered by an agency, must submit annually the following to the appropriate agency:

- The name, mailing address, telephone number, and website address of the organization.
- The statutory authority or executive order pursuant to which the organization was created.
- A brief description of the mission and results obtained by the organization.

¹ See Section 258.015(1), F.S.; Section 257.43(1), F.S.; Specific CSOs and DSOs are granted the authority to operate and conduct programs and activities, raise funds, request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer fund and property; and make expenditures.

² Chapter 2014-96, s. 3, Laws of Fla. (creating s. 20.058, effective June 13, 2014).

- A brief description of the plans of the organization for the next 3 fiscal years.
- A copy of the organization's code of ethics.
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).³

Each agency receiving the above information from a CSO or DSO must make the information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

By August 15 of each year, each agency must report the above required information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

Any contract between an agency and a CSO or DSO must be contingent upon the organization's submitting and posting the required information. If an organization fails to submit the required information for 2 consecutive years, the agency head must terminate any contract between the agency and the organization.

A law creating or authorizing the creation of a CSO or DSO must be repealed on October 1 of the 5th year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed and saved from repeal through reenactment by the Legislature.

The 2014 law repeals existing statutory authority for specified CSOs and DSOs on October 1, 2017, October 1, 2018, and October 1, 2019, unless reviewed and saved from repeal by the Legislature.

Audits of state agency CSOs and DSOs

Section 215.981, F.S., provides that each CSO and DSO with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than universities, community colleges, or district school boards, must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. The audit report must be submitted within 9 months after the end of the fiscal year to the Auditor General and to the state agency responsible for creation, administration, or approval of the DSO or CSO.

Notwithstanding the above, CSOs and DSOs for the Department of Environmental Protection or the Department of Agriculture and Consumer Services that are not for profit and that have annual expenditures of less than \$300,000 are not required to have an independent audit. Those departments establish accounting and financial management guidelines for those organizations under its jurisdiction, and conduct operational and financial reviews of a selected number of CSOs and DSOs that fall below the \$300,000 threshold.

³ See Section 20.058(1), F.S.

Florida PDMP Foundation, Inc.

The Florida PDMP Foundation, Inc., (Foundation) is a direct support organization that is a Florida not-for-profit corporation, incorporated under ch. 617, F.S. Created by the Legislature in 2009, its purpose is to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value or other property, either real or personal, and make expenditures to provide funding to or for the indirect benefit of the department in furtherance of the Prescription Drug Monitoring Program (PDMP), pursuant to s. 893.055(11)(a), F.S.⁴

The PDMP uses an electronic database system to monitor the prescribing and dispensing of certain controlled substances. In the first half of calendar year 2015, Florida reported more than 4,600 drug-related deaths.⁵ Prescription drugs continue to be found more often than illicit drugs, both as the cause of death and present at death. Prescription drugs account for 68.9 percent of all drug occurrences in the *FDLE Medical Examiners Interim Drug Report*.⁶

The overall mission of the Foundation as the DSO for the PDMP is to fundraise for the benefit of the PDMP in order to reduce drug abuse and diversion. Through June 2016, the Foundation reports assets over \$1.5 million in private and corporate contributions, of which \$1.4 million are currently being invested to provide for future funding needs.⁷ The Foundation also provided over \$11,000 in supplemental contributions to E-FORCSE (Electronic-Florida Online reporting of Controlled Substances Evaluation) operations to support special event marketing and promotional projects.

The PDMP Foundation has two major goals. The first goal is to raise funds for the operation of E-FORCSE, the state's prescription drug monitoring database. The yearly cost to maintain the database is approximately \$600,000.⁸ The Foundation seeks funding from a number of sources, including corporations, individuals, and law enforcement. However, the Foundation is prohibited by law from receiving funds from any corporation representing the pharmaceutical industry and the PDMP must be funded using nonstate funding.⁹

Since inception, the E-FORCSE has received over \$2.4 million in federal grants for database enhancements and special projects.¹⁰ Several corporations have also donated funding for the

⁴ Florida PDMP Foundation, Inc., *Annual Report to the Department of Health*, (2016) p. 3, available at http://www.flpdmpfoundation.com/wp-content/uploads/2016/08/PDMPF_Annual_Report_2016.pdf (last visited Jan. 19, 2017).

⁵ Florida Dep't of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners - Interim Report 2015*, pg. ii available at <http://www.flpdmpfoundation.com/wp-content/uploads/2016/04/Medical-Examiner-Commissions-Interim-Report-2015.pdf>, (last visited Jan. 20, 2017).

⁶ Id.

⁷ Id.

⁸ Florida PDMP Foundation, *Goals*, <http://www.flpdmpfoundation.com/goals/> (last visited Jan. 20, 2017).

⁹ Id. and s. 893.055(10), F.S. *But see* s. 893.055(17), F.S., where the Legislature appropriated funds for the 2016-2017 fiscal year only to administer the PDMP. A similar provision was included in the 2015 Implementing bill for the 2015-2016 fiscal year, and in 2013 the Legislature appropriated \$500,000 for the 2013-2014 fiscal year.

¹⁰ Florida PDMP Foundation, *Board of Directors Meeting Minutes* (Dec. 15, 2016) (on file with the Senate Committee on Health Policy).

initial start-up of the database which became fully functional in September 2011.¹¹ The Legislature appropriated \$500,000 in 2013 towards its ongoing maintenance and also authorized the use of General Revenue funding for fiscal years 2015-2016 and 2016-2017 to administer the PDMP. The department reports that the PDMP has sustainable funding through fiscal year 2019-2020.¹²

Major marketing of the PDMP by the Foundation began in 2014 which helped bring donations from sheriff's offices and police departments which donated Asset Forfeiture Funds.¹³ The Florida Sheriff's Association contributed \$20,000. In 2014, Attorney General Pam Bondi provided the PDMP Foundation with a \$1.973 million contribution from a pharmaceutical settlement.¹⁴

The second goal of the Foundation is to educate licensed health care providers and law enforcement officials about the database and how to utilize it in the management of controlled substances in patient care and for active criminal investigations.¹⁵ Foundation representatives attend major conferences and trade shows with entities such as the Florida Medical Association, Florida City and County Management Association, Florida Sheriffs Association, Florida Police Chiefs Association, Florida Public Health Association, Florida Dental Association, and the Florida Pharmacy Association to market the PDMP database and to seek corporate donations.¹⁶ The Foundation also uses these opportunities to market its online courses on the PDMP.

The Foundation is led by an Executive Director and a board of directors whose members are appointed by the State Surgeon General. The statute permits a minimum of five members. The Foundation's board of directors currently has nine members.¹⁷ The members represent health care providers, physicians, the pharmaceutical industry, and a consumer advocate.¹⁸ The State Surgeon General provides guidance to the board members to ensure funds are not received from inappropriate sources such as those who may benefit from the purchase of goods or services by the department in furtherance of the program.

The Foundation has executed a two-year contract with the department and operates tax-exempt under section 501(c)(3) of the federal Internal Revenue Code.¹⁹ The department must certify annually that the Foundation is in compliance with its contract with the department and that continuation of that contract is in the best interest of the State of Florida.

¹¹ Florida PDMP Foundation, *Donations*, <http://www.flpdmpfoundation.com/donations/> (last visited: Jan. 20, 2017).

¹² Florida Department of Health, *EFORCSE 2015-2016 Prescription Drug Monitoring Program Annual Report, December 1, 2016*, p. 8, <http://www.floridahealth.gov/statistics-and-data/eforcse/documents/2016PDMPAnnualReport.pdf> (last visited: Jan. 22, 2017).

¹³ *Supra* note 11.

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 8.

¹⁶ *Supra* note 4.

¹⁷ Florida PDMP Foundation, *About Florida PDMP Foundation, Inc.*, <http://www.flpdmpfoundation.com/about/> (last visited: Jan. 19, 2017).

¹⁸ *Id.*

¹⁹ Florida PDMP Foundation, *Attachment A - Certification of Direct Support Organization Contract Compliance*, http://www.flpdmpfoundation.com/wp-content/uploads/2016/08/PDMPF_Annual_Report_2016.pdf (last visited: Jan. 20, 2017).

The Foundation's Annual Report includes a brief description of its *Three Year Strategic Plan* as required in s. 20.058, F.S., and a copy of its current two-year contract with the department.

The Foundation's annual expenditures have been less than \$100,000; therefore, no financial audit has been or is required to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General.²⁰ To comply with other state reporting rules, the Foundation submits the end-of-the-fiscal year's (June 30) bank statements to the state Treasury.²¹

III. Effect of Proposed Changes:

The scheduled repeal date of October 1, 2017 for the direct-support organization, Prescription Drug Monitoring Foundation, is removed from s. 893.055, F.S., and the Foundation is saved from repeal.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Current statutory language under s. 893.055(10), F.S., limits the sources of funding that the department may use for administrative funding to federal grants or private funding.

²⁰ Transfers from the Foundation to the department for PDMP activities are not classified as expenditures of the Foundation.

²¹ E-Mail between Department of Health staff, PDMP Foundation staff, and Department of Financial Services staff (July and August 2013) (on file with Senate Committee on Health Policy).

The PDMP program is contingent upon the receipt of nonstate funding. If the Foundation is not saved from repeal, the PDMP may need to find another source of funding to maintain operations if the operation of the PDMP is to continue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Statutory text in s. 893.055(11)(d)7., F.S., refers to a task force that expired on July 1, 2012. This reference is now obsolete and may be deleted.

The Foundation's annual expenditures have been less than \$100,000; therefore, no financial audit has been or is required to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. To be compliant with other state reporting rules, the Foundation submits the end-of-the-fiscal year's (June 30) bank statements to the state Treasury.²² Transfers to the department, which in some years have exceeded \$100,000 cumulatively, have not counted toward triggering an independent audit of the Foundation.

VIII. Statutes Affected:

This bill substantially amends section 893.055, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² Id.